

taking his prescribed psyllium fiber, and that defendants should provide him with an 8-oz. plastic cup instead.

Upon consideration, the court finds that defendants' motion to dismiss should be granted. Two 4-oz. Styrofoam cups provided on a weekly basis appear to be sufficient means for plaintiff to take his prescribed psyllium fiber. The court finds that plaintiff's allegations fail to allege that he is in imminent danger of serious physical injury; therefore, his claims should be dismissed, pursuant to 28 U.S.C. 1915(g).

On June 22, 2005, plaintiff filed motions seeking declaratory judgment as to his right to trial by jury and for temporary restraining order that defendants provide him with immediate access to the law library for a period of two full hours Monday through Friday and for legal assistance by persons trained in the law. In light of this court's recommendation of dismissal, plaintiff's motions should be denied. Moreover, plaintiff's claims do not necessarily require legal research because the only issue is whether plaintiff is in imminent danger of serious physical harm.

IT IS, THEREFORE, RECOMMENDED that plaintiff's motion for declaratory judgment and for temporary restraining order be denied [17, 18]. It is further

RECOMMENDED that defendants' motion to dismiss be granted, and plaintiff's claims be dismissed [22].

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. If additional time is needed, a motion for an extension of time must be filed within twenty days. The motion should state the reasons for the request. *See Nash v. Black*, 781 F.2d 665, 667 (8th Cir. 1986) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983). Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal.

Dated this 29th day of July, 2005, at Jefferson City, Missouri.

/s/ _____

WILLIAM A. KNOX
United States Magistrate Judge